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LABOUR & ESI DEPARTMENT

NOTIFICATION

The 1st March 2012

No. 1679—IR-(ID)-11/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th December 2011 in Industrial Dispute Case No. 6/2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Gangadhar Meher College, Sambalpur and their Workman Shri Tunia Parida was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 6 OF 2010

Dated the 30th December 2011

Present :

Shri Pradipa Kumar Sasmal,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of
Gangadhar Meher College,
Sambalpur through the :—

First-party—Managements

- (1) The Superintendent,
Women's Hostel No. 1,
Gangadhar Meher College, Sambalpur,
At/P.O. Sambalpur.
- (2) The Principal,
Gangadhar Meher College, Sambalpur,
At/P.O. Sambalpur,
Dist. Sambalpur.

And

Their Workman
Shri Tunia Parida,
S/o Jogendra Parida,
At Ram Hanuman Mandir,
Zilla School Chowk,
At/P.O. Sambalpur,
Dist. Sambalpur.

Second-party—Workman

Appearances :

Smt. B. Hota, Authorised Representative

For the First-party—Management

Self

For the Second-party—Workman

AWARD

The present dispute arose out of the reference made by the Government of Orissa (now Odisha), Labour & Employment Department, vide their Order, dated the 22nd March 2010 under Letter No. 2384—ID-11/2010-LE., giving rise to the registration of the present case under Sections 10 and 12 of the Industrial Disputes Act, 1947 (for short, the "Act"). The dispute involved is Schedule as follows :

"Whether the action of the management of Gangadhar Meher College, Sambalpur in terminating the services of Shri Tunia Parida (ex Cook) with effect from the 1st March 2008 by way of refusal of employment is legal and/or justified ? If not, what relief Shri Parida is entitled to?"

2. The workman in his statement of claim submitted that he was employed by the first-party management since Dt. 1-2-1994 and accordingly he served to the entire satisfaction of the superiors, there being no complaint against him. He was said to have been paid with his wages by the first-party management on monthly basis and was assigned duties in the establishment as and when directed and required and in the process, he worked continuously from the date of his employment on Dt. 1-2-1994. But he alleged that the first-party management all on a sudden refused the service to him with effect from the 1st March 2008 without assigning any reason thereof and therefore the action of the management, according to the workman, amount to his retrenchment that too illegally as the first-party had not observed the procedure laid down under Section 25-F/25-N of the Act. He also alleged that before the so-called retrenchment the first-party management did not pay him the retrenchment compensation and that being so, the same would be honest and void *ab initio* consequently deeming that he is still in service and entitled for reinstatement with full back wages and other benefits incidental thereto. Besides that he submitted further that after the so-called illegal retrenchment from service he lodged a complaint petition before the local Labour Machinery who after investigating the complaint admitted the dispute into conciliation but due to the adamant attitude of the first-party the amicable settlement could not be arrived at and the conciliation ended in failure, a report whereof was also submitted by the Assistant Labour Officer, Sambalpur.

On the other hand, the workman alleged that the first-party management retained the service of the workman who is junior to him in violation of Section 25-G of the Act; whereas after retrenchment from service he remained unemployed in spite of his best efforts for alternative employment for which he is leading a miserable life. He, therefore, submitted that the establishment of the

management being a very vast and profitable one which engages other workman till date without giving him a chance of reinstatement, the dispute involved attracts all the provisions of the Act and as such, he may be granted with the reliefs of reinstatement in his job with full back wages from the date of termination of service on Dt. 1-3-2008.

3. The first-party management No. 1 in the written statement though admitted that the second-party workman was getting his wages from the hostel on monthly basis as per cooking work done by him therein but his work, conduct and behaviour was not satisfactory as invariably he was coming to the ladies hostel to cook food for the inmates under influence of liquor and was also remaining absent frequently as a result of which the hostel inmates were facing a lot of trouble and managing the affairs by asking cooks of other hostel, procuring Cook from outside and purchasing meals through Contractor. He was therefore advised/instructed to size up his conduct but he did not pay any heed either to the advice of the inmates or the Contractor or the Superintendent of the hostel. It was submitted further by the first-party management that the second-party workman did not come to the hostel to cook food for the inmates from March, 2008 without intimating anybody or Contractor who was entrusted to supply food articles for which on the protest made by the inmates, the second-party workman was asked to cook food for the boy's hostel of the college but he refused to do so. With these assertions, the first-party management submitted further that the second-party does not satisfy the definition of the "workman" nor their institution comes under the purview of the "Industry" under the provisions of the Act and since the workman had not been recruited following the due recruitment procedure nor was recruited against the sanctioned post, the procedure laid down under Section 25-F/25-N were not followed; whereas the persons having been engaged by the Contractor for the purpose of supply of food to the hostel, it had not violated the provisions of Section 25-G of the Act. The first-party management in view of the approach of the workman to the Labour Machinery stated to have apprised the Labour Officer about the stand taken by it in the case but the said officer without considering the same submitted the failure report to the Government in a mechanical manner. The first-party management, therefore, submitted to answer the reference negatively in favour of the second-party workman by dismissing the same with the further submission that he as a Cook is engaged himself in cooking food in many private houses and social functions as a professional Cook and is not at all sitting idle at his house without any work; whereas when offered to work as a Cook in the boys' hostel of the college he refused to do so which otherwise established the fact that there was no violation of Section 25-N of the Act.

The management No. 2, who is the Principal of Gangadhar Meher College, Sambalpur, in a written Memo., dated the 25th August 2010 adopted the written statement filed by the first-party management No. 1 with the further disclosure that he does not want to file any separate written statement.

4. In his rejoinder to the written statement the second-party workman submitted that the management has tried to mislead the court by advancing the concocted story to defeat his claim and as such, prayed to reinstate him with full back wages.

5. On the above pleadings of the parties, the following issues have been settled for adjudication :—

ISSUES

- (i) "Whether the action of the management of Gangadhar Meher College, Sambalpur, in terminating the services of Shri Tunia Parida (ex Cook), with effect from the 1st March 2008 by way of refusal of employment is legal and/or justified ?

(ii) If not, to what relief Shri Parida is entitled to ?"

6. The workman got himself examined as W.W. 1 besides examining an independent witness W.W. 2. He, however, filed affidavit evidence of one Shyamakanta Bisi, Smt. Annapurna Barik and Smt. Tanay Gour Nag on Dt. 22-9-2011 but out of them could examine only Shyamakanta Bisi as W.W. 2 and thereafter prayed for adjournments on different occasions which were granted to him till Dt. 4-11-2011. From that date onwards he did not participate in the furtherance of the proceeding for which his evidence was closed on that day. The first-party management in its turn examined the Assistant Superintendent of Womans' Hostel No. 1 and the Superintendent thereof as M.W. 1 and 2 respectively who were, for the absence of the workman could not be cross-examined. However when the workman proved the identity card as the documentary evidence certain papers were brought into evidence on behalf of the first-party management primarily to show the allegations made against the second-party workman by the inmates of the hostel, the Contractor and the supplier of food besides the enquiry report submitted by the M.W. 1 on that score.

No evidence was adduced on behalf of the first-party management No. 2.

7. *Issue No. (i)*—The workman while submitting his Examination-in-Chief through the affidavit, marked Ext. W. 1 reiterated the stand taken by him in the statement of claim and the rejoinder submitted to the written statement filed by the first-party management. Besides that while in the box he proved the identity card issued to him by the management college as Ext. W. 2. That document was questioned during cross-examination to him and he ultimately admitted that the Superintendent of the concerned hostel is competent to issue the identity card whereas the same had been issued to him by one Satish Pattanaik, the then working as PET Teacher of the management college to avoid harassment at the hands of the law enforcing agency. However, it was found that such identity card was issued to him for the years 1997 and 1998 and the same has not been renewed in each calendar year. The same was, therefore, to be a fake document which was, of course denied by the workman. As regards his appointment in the job, W.W. 1 when questioned during cross-examination stated that one Shri Madhu Mishra, who was the Assistant Superintendent of Womens' Hostel No. 1, had taken him near Mr. Mishra, the then Principal of Gangadhar Meher College, to do the job of Cook. As per the statement of this witness his salary was being paid from out of the payments made by the students staying in the hostel. However, for the allegations made against him by the management as regards his conduct and performance, it is seen that W.W. 1 ultimately admitted during further cross-examination at Para. 7 that on Dt. 22-2-2008 he had done the job of a Cook in the house of Shri Satish Pattanaik, ex PET, on the occasion of a marriage function; and that during that time he was called by the then Superintendent to come to the hostel and prepare food for the inmates but for his engagement in another place he did not attend the hostel. It is also seen that for such absence of this workman there was sudden dislocation in the hostel for supply food to the inmates and subsequent to the same the workman had approached the authority to resume his duty but he was prevented by the Guard at the entrance door. It is also seen that during the first week of March, 2008 he had received his remuneration from the concerned clerk of the hostel office and by then the Superintendent was present in the hostel office but he then did not disclose either to the concerned clerk or the Superintendent to resume his duty. Of course, he stated to have later on called on the Superintendent at her house and begged excuse.

The only independent witness examined on behalf of the workman as W.W. 2 deposed that the workman was illegally retrenched by the Superintendent of Ladies Hostel of Gangadhar Meher College, Sambalpur and noticing his miseries after retrenchment from service he prayed and approached the Superintendent of the said hostel in vain for his reinstatement for service. This man is found to be somewhat involved in politics and he himself admitted at Para. 2 that he was the Vice-President of Student Congress of Sambalpur District and during further cross-examination stated that since the second-party workman had worked for a quite long time as a Cook in the first-party management he, for the humanitarian point of view requested the Superintendent for his reinstatement as he was a poor man. But, at the same time, in his fairness this witness admitted to have no knowledge if the second-party workman was quite often remaining absent from his duties on the Sundays and also on other days besides expressing his ignorance if the second-party workman had in fact called on the Superintendent to help his reinstatement in the service.

As stated earlier, though the workman filed affidavit of two other witnesses but thereafter despite grant of sufficient opportunity neither brought the witnesses to the box nor participated further in the proceeding.

On the other hand, on being called upon by the court, the management adduced evidence through the Superintendent and Assistant Superintendent of the concerned hostel, who in their evidence stated about the dereliction in duty exhibited by the workman besides behaving improperly being intoxicated at times though he was working as a Cook in the Ladies Hostel. To strengthen their Examination-in-Chief they also exhibited certain number of papers as documentary evidence from which it could be seen that long before the initiation of the dispute between the parties complaint has been made against the workman not only by the inmates of the hostel but also the Contractor who had engaged him in the job and the food supplier of the hostel. The allegations were stated to have been enquired into by M.W. 1 who claimed himself to be the Assistant Superintendent of the hostel concerned as his additional duties and found the substance to the allegations to be not untrue. This documentary evidence remained unchallenged in view of the failure of the workman amidst trial of the proceeding to participate in its furtherance. Since the dispute is in relation to the action of the management relating to the termination of the services of the workman, participation of the workman in the proceeding and cross-examination of the witnesses examined on behalf of the management was highly necessary to gauge their testimony after being tested by cross-examination. That having been not done by the workman, the evidence adduced on behalf of the management having remained unchallenged, in my view, otherwise established the fact that the allegations made against the workman with regard to the job rendered by him were not unfounded and the workman himself had in view of his own admission during cross-examination, not taken any step to make good the deficiency in his service and to approach the authority concerned to help continuation of his service as usual. Therefore, taking into account the facts and circumstances of the case and the place of work of the workman where he was engaged to supply food to the inmates namely girls residing in the hostel the action taken, if any, by the management as regards the service of the workman was neither illegal nor justified. Hence, this issue is answered against the workman.

8. *Issue No. (ii)*—For the discussion made in issue No. (i), it appeared to my considered view that the workman would not be entitled to any reliefs prayed for in this case. Hence, answering this issue accordingly, it is ordered.

AWARD

That the reference be and the same is answered against the workman on contest but without any cost.

Dictated and corrected by me.

P. K. SASMAL
30-12-2011
Presiding Officer
Labour Court, Sambalpur

P. K. SASMAL
30-12-2011
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
T. K. PANDA
Under-Secretary to Government